



Pipeline Authority Amendment Act 1992

No. 188 of 1992

**An Act to amend the *Pipeline Authority Act 1973*,
and for related purposes**

[Assented to 18 December 1992]

The Parliament of Australia enacts:

Short title

1. This Act may be cited as the *Pipeline Authority Amendment Act 1992*.

Commencement

2. This Act commences on the day on which it receives the Royal Assent.

Principal Act

3. In this Part, “Principal Act” means the *Pipeline Authority Act 1973*¹.

Interpretation

4. Section 3 of the Principal Act is amended:

(a) by inserting in subsection (1) the following definition:

“‘**subsidiary company**’ means a company that is a subsidiary of the Authority;”;

(b) by adding at the end the following subsection:

“(4) For the purposes of this Act, the question whether a company is a subsidiary of the Authority is to be determined in the same manner as the question whether a corporation is a subsidiary of another corporation is determined for the purposes of the Corporations Law.”.

Membership of Authority

5.(1) Section 6 of the Principal Act is amended:

(a) by omitting subsections (1) and (2) and substituting the following subsections:

“(1) The Authority is to consist of the following directors:

(a) the Chairperson;

(b) the Deputy Chairperson;

(c) the Chief Executive Officer;

(d) a director nominated for appointment by the Australian Gas Light Company;

(e) 4 other directors.

“(2) The directors, other than the Chief Executive Officer, are to be appointed by the Minister as part-time directors.”;

(b) by omitting subsections (2A), (3) and (3A) and substituting the following subsection:

“(3) A part-time director is to be appointed for such period, not exceeding 5 years, as the Minister specifies in the instrument of appointment, but is eligible for re-appointment.”.

(2) Each person who, immediately before the commencement of this section, held office as a part-time member (other than as Chairman or Deputy Chairman) of the Pipeline Authority continues, subject to the Principal Act as amended by this Act, to hold office as a director for the remainder of the term (if any) for which the person was appointed.

(3) A person who, immediately before the commencement of this section, held office as Chairman or Deputy Chairman of the Pipeline Authority continues, subject to the Principal Act as amended by this Act, to hold office as the Chairperson or Deputy Chairperson, as the case requires, for the remainder of the term (if any) for which the person was appointed.

Leave of absence

6. Section 8 of the Principal Act is amended by omitting subsection (2) and substituting the following subsection:

“(2) The Authority may grant the Chief Executive Officer leave of absence, other than recreation leave, on such terms and conditions as to remuneration or otherwise as the Authority determines.”.

Termination of appointment

7. Section 9 of the Principal Act is amended:

(a) by omitting from subsection (1) “Governor-General” and substituting “Minister”;

(b) by omitting from subsection (1) “member” and substituting “part-time director”;

(c) by omitting subsection (2) and substituting the following subsection:

“(2) The Minister may terminate the appointment of a part-time director whose performance has been, in the opinion of the Minister, unsatisfactory for a significant period of time.”;

(d) by omitting from paragraph (3)(c) “subsection (4)” and substituting “section 10A”;

(e) by omitting from subsection (3) “member” (wherever occurring) and substituting “director”;

(f) by omitting from subsection (3) “Governor-General” and substituting “Minister”;

(g) by omitting subsections (4), (5) and (6).

8.(1) Section 10 of the Principal Act is repealed and the following sections are substituted:

Chief Executive Officer

“10.(1) The Chief Executive Officer is to be appointed by the Authority.

“(2) The Chief Executive Officer holds office during the Authority’s pleasure.

“(3) The Chief Executive Officer holds office on a full-time basis.

“(4) A person who has reached 65 must not be appointed or re-appointed as the Chief Executive Officer.

“(5) A person must not be appointed or re-appointed as the Chief Executive Officer for a period that extends beyond the day on which the person will reach 65.

Disclosure of interests

“10A.(1) If:

(a) a director has a direct or indirect pecuniary interest in a matter

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being considered, or about to be considered, by the Authority;
and

- (b) the interest could conflict with the proper performance of the director's duties in relation to the consideration of the matter;

the director must, as soon as practicable after the relevant facts come to the director's knowledge, disclose the nature of the interest at a meeting of the Authority.

“(2) A disclosure under subsection (1) must be recorded in the minutes of the meeting and, unless the Authority otherwise determines, the director must not:

- (a) be present during any deliberation of the Authority in relation to the matter; or
- (b) take part in any decision of the Authority in relation to the matter.

“(3) A director who has made a disclosure under subsection (1), must not:

- (a) be present during any deliberation of the Authority for the purpose of making a determination under subsection (2) in relation to the director; or
- (b) take part in the making of the determination.

“(4) For the purpose of the making of a determination by the Authority under subsection (2) in relation to a director who has made a disclosure under subsection (1), that director must be disregarded for the purpose of constituting a quorum of the Authority for any such deliberation or decision.

“(5) Subsection (1) does not apply in relation to a matter relating to the supply of goods or services for the director if the goods or services are, or are to be, available to members of the public on the same terms and conditions.

Resignation

“10B. A part-time director may resign by giving a signed notice of resignation to the Minister.”.

(2) A person who, immediately before the commencement of this section, held office as the Executive Member of the Pipeline Authority holds office, subject to the Principal Act as amended by this Act, as the Chief Executive Officer as if he or she had been appointed by the Authority on the commencement of this section.

9. Section 11 of the Principal Act is repealed and the following sections are substituted:

Acting appointments—part-time directors

“11.(1) The Minister may appoint a person to act as a part-time director (other than Chairperson) during a period, or during all periods, when:

- (a) there is a vacancy in the office of a part-time director (including the Chairperson and the Deputy Chairperson); or
- (b) a part-time director (including the Chairperson and the Deputy Chairperson) is absent from duty or from Australia or, for any other reason, is unable to perform the functions of his or her office; or
- (c) a person appointed under this section to act as a part-time director is acting as Chairperson under subsection (3) or is acting as Chief Executive Officer under an appointment under subsection 11A(1).

“(2) A person may only be appointed to act as the director referred to in paragraph 6(1)(d) if the person has been nominated by the Australian Gas Light Company for appointment.

“(3) The Deputy Chairperson is to act as Chairperson during any period when:

- (a) the Chairperson is absent from duty or from Australia or, for any other reason, is unable to perform the functions of his or her office; or
- (b) there is a vacancy in the office of Chairperson.

“(4) Anything done by or in relation to a person purporting to act under this section is not invalid merely because:

- (a) the occasion for the appointment had not arisen; or
- (b) there was a defect or irregularity in relation to the appointment; or
- (c) the appointment had ceased to have effect; or
- (d) the occasion for the person to act had not arisen or had ceased.

Acting appointments—Chief Executive Officer

“11A.(1) The Authority may appoint a person to act as the Chief Executive Officer during a period, or during all periods, when:

- (a) there is a vacancy in the office of Chief Executive Officer; or
- (b) the Chief Executive Officer is absent from duty or from Australia or, for any other reason, is unable to perform the functions of his or her office.

“(2) Anything done by or in relation to a person purporting to act under this section is not invalid merely because:

- (a) the occasion for the appointment had not arisen; or
- (b) there was a defect or irregularity in relation to the appointment; or

- (c) the appointment had ceased to have effect; or
- (d) the occasion for the person to act had not arisen or had ceased.”.

Meetings of Authority

10. Section 12 of the Principal Act is amended by omitting from subsection (3) “4 members” and substituting “5 directors”.

General powers of Authority

11. Section 15 of the Principal Act is amended by adding at the end “including entering into contracts for the purposes of this Act”.

Particular powers of Authority

12. Section 16 of the Principal Act is amended:

- (a) by inserting after paragraph (c) the following paragraphs:
 - “(ca) enter into contracts or leases that allow a subsidiary company to use land in which the Authority has an interest; or
 - (cb) allow a subsidiary company to use land in which the Authority has an interest;”;
- (b) by inserting after paragraph (k) the following paragraph:
 - “(ka) to form, or participate in the formation of, a company;”.

13. After section 16 of the Principal Act the following sections are inserted:

Limitation on formation etc. of companies

“16A.(1) Except with the written approval of the Minister, the Authority must not:

- (a) form, or participate in the formation of, a company that would, on its formation, be a subsidiary of the Authority; or
- (b) subscribe for, or otherwise acquire, shares in a company if, on the Authority becoming the holder of those shares, the company becomes a subsidiary of the Authority.

“(2) An approval may be subject to terms and conditions specified in the approval.

“(3) The Minister may revoke or vary the terms and conditions specified in an approval.

“(4) The Minister must not specify terms and conditions in an approval in relation to the amounts to be charged for work done, or services, goods or information supplied by the Authority.

“(5) It is the duty of the Authority to comply with any terms and conditions specified in an approval.

“(6) The revocation or variation of terms and conditions under subsection (3) does not affect any contracts entered into, or acts done, before the day on which the terms and conditions were revoked or varied, as the case may be.

Sale or disposal of pipeline not prevented

“16B. Nothing in this Act is to be taken to prevent the sale or disposal of a pipeline.”.

Power to enter land and take levels etc.

14. Section 17 of the Principal Act is amended by inserting “, an officer or employee of a subsidiary company” after “employee of the Authority”.

Power to enter and occupy land

15. Section 18 of the Principal Act is amended:

- (a) by inserting in subsection (1) “or a subsidiary company” after “The Authority”;
- (b) by inserting in subsection (1) “or the company” after “by the Authority”.

16. After section 18 of the Principal Act the following section is inserted:

Functions of subsidiary

“18A. If the Authority:

- (a) forms, or participates in the formation of, a company that would, on its formation, be a subsidiary of the Authority; or
- (b) subscribes for, or otherwise acquires, shares in a company that would on the Authority becoming the holder of those shares, become a subsidiary of the Authority;

the functions the subsidiary may have are to be determined as if:

- (c) the functions of the Authority included the following functions:
 - (i) to design pipelines for the conveyance or distribution of petroleum in Australia;
 - (ii) to construct pipelines for the conveyance or distribution of petroleum in Australia;
 - (iii) to acquire pipelines, or interests in pipelines, for the conveyance or distribution of petroleum in Australia;
 - (iv) to maintain pipelines for the conveyance or distribution of petroleum in Australia;
 - (v) to operate pipelines for the conveyance or distribution of petroleum in Australia;
 - (vi) to buy petroleum that is to be, is being or has been conveyed by the subsidiary and is in, or is to come into, the possession of the subsidiary for that purpose, and to sell petroleum so purchased;

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(vii) to provide consultancy and transmission support services in relation to:

- (A) the design; or
- (B) the construction; or
- (C) the maintenance; or
- (D) the operation;

of pipelines for the conveyance or distribution of petroleum in Australia and in other countries; and

(d) in its performance of the functions in paragraph (c), the Authority were subject to subsection 13(2).”.

Repeal of section 29

17. Section 29 of the Principal Act is repealed.

Profits of the Authority

18. Section 30 of the Principal Act is amended by omitting from subsection (2) “The” and substituting “Subject to section 30A, the”.

19. After section 30 of the Principal Act the following section is inserted:

Authority to pay dividends from subsidiaries to Commonwealth

“30A. The Authority must pay to the Commonwealth amounts of dividends received by the Authority from subsidiary companies other than such amounts as are specified by the Minister in a written notice given to the Authority.”.

20. After section 33 of the Principal Act the following sections are inserted:

Liability of subsidiary to taxation

“33A.(1) Subject to Division 5 of Part VA, a subsidiary company is subject to taxation under the laws of the Commonwealth and a State or Territory.

“(2) A subsidiary company is not a public authority for the purposes of paragraph 23(d) of the *Income Tax Assessment Act 1936*.

Revaluation of assets

“33B. The Authority must, at least every 3 years, revalue its assets in accordance with normal commercial practice.”.

21. After Part V of the Principal Act the following Part is inserted:

**“PART VA—RE-ORGANISATION OF THE BUSINESS OF
THE AUTHORITY**

“Division 1—Interpretation

Interpretation

“33C. In this Part, unless the contrary intention appears:

‘Assessment Act’ means the *Income Tax Assessment Act 1936*;

‘asset’ means property of any kind, and includes:

- (a) any legal or equitable estate or interest (whether present or future, vested or contingent, tangible or intangible) in real or personal property of any description; and
- (b) any chose in action; and
- (c) any right, interest or claim of any kind in or in relation to property (whether arising under an instrument or otherwise, and whether liquidated or unliquidated, certain or contingent, accrued or accruing);

‘authorised person’ means the Minister or a person authorised, in writing, by the Minister for the purposes of this Part;

‘delivery point’ means any point on a pipeline where petroleum is delivered by the Authority to a person;

‘instrument’ means an instrument of any kind, and includes:

- (a) any contract, deed, undertaking or agreement; and
- (b) any mandate, instruction, notice, authority or order; and
- (c) any lease, licence, transfer, conveyance or other assurance; and
- (d) any guarantee, bond, power of attorney, bill of lading, negotiable instrument or order for the payment of money; and
- (e) any mortgage, charge, lien or security;

whether express or implied and whether made or given orally or in writing;

‘instrument to which this Part applies’ means an instrument:

- (a) to which the Authority is a party; or
- (b) that was given to, by or in favour of the Authority; or
- (c) in which a reference is made to the Authority; or
- (d) under which any money is or may become payable, or any other property is to be, or may become liable to be, transferred, conveyed or assigned, to or by the Authority;

‘interest’ in relation to land, means:

- (a) a legal or equitable estate or interest in land; or
- (b) a right, power or privilege over, or in relation to, the land;

‘liability’ means a liability of any kind, and includes an obligation of any kind (whether arising under an instrument or otherwise, and whether liquidated or unliquidated, certain or contingent, accrued or accruing);

'Lithgow pipeline' means the Authority's pipeline originating at a point on the Moomba Sydney pipeline near Young in New South Wales, and includes the delivery points, and pipelines leading from the first-mentioned pipeline to the delivery points, at or near the following places in that State:

- (a) Orange;
- (b) Bathurst;
- (c) Blayney;
- (d) Lithgow;

'Moomba' means Moomba in South Australia;

'Moomba-Sydney pipeline' means the Authority's pipeline from Moomba to the delivery point at Wilton in New South Wales, and includes the delivery points, and pipelines leading from the first-mentioned pipeline to the delivery points, at or near the following places in that State:

- (a) Bowral;
- (b) Goulburn;
- (c) Marulan;
- (d) Moss Vale;

'Moomba-Sydney pipeline system' means the pipeline system consisting of the following pipelines:

- (a) the Moomba-Sydney pipeline;
- (b) the Lithgow pipeline;
- (c) the Wagga pipeline;

'nominated staff member' means a person to whom a determination under section 33R applies;

'non-transferring asset' means:

- (a) the Moomba-Sydney pipeline system; and
- (b) any interests in relation to the land on or under which the pipelines for the Moomba-Sydney pipeline system are constructed; and
- (c) any other asset that does not become, under this Part, an asset of the receiving subsidiary;

'non-transferring instrument' means an instrument to which this Part applies that does not become, under this Part, an instrument of the receiving subsidiary;

'non-transferring liability' means a liability that does not become, under this Part, a liability of the receiving subsidiary;

'proceeding to which this Part applies' means a proceeding to which the Authority is a party, other than a proceeding that does not relate to the transferred business;

're-organisation day' means the day fixed under section 33D;

'share' means a share in the share capital of a company, and includes stock;

'staff member' means a person who is an officer or employee of the Authority;

'tax exempt matter' means:

- (a) the nomination of the receiving subsidiary under section 33E; and
- (b) the making of a determination under section 33F; and
- (c) business of the Authority ceasing, under this Part, to be business of the Authority and becoming business of the receiving subsidiary; and
- (d) the issue of shares under section 33M; and
- (e) the operation of this Part in any other respect; and
- (f) giving effect to a matter referred to in another paragraph of this definition or otherwise giving effect to this Part;

'transfer day', in relation to a nominated staff member, means the day applicable to the staff member in the determination under section 33R that is applicable to the staff member;

'transferring asset' means an asset other than:

- (a) the Moomba-Sydney pipeline system; and
- (b) any interests in relation to the land on or under which the pipelines for the Moomba-Sydney pipeline system are constructed;

to which a determination under paragraph 33F(1)(a) applies;

'transferring business' means the business that becomes, under this Part, business of the receiving subsidiary; and

'transferring instrument' means an instrument (other than an instrument relating to the Moomba-Sydney pipeline system) to which a determination under paragraph 33F(1)(c) applies;

'transferring liability' means a liability (other than a liability relating to the Moomba-Sydney pipeline system) to which a determination under paragraph 33F(1)(b) applies;

'transferring staff member' means a staff member who, under this Part, becomes employed by the receiving subsidiary;

'Wagga pipeline' means the Authority's pipeline originating at a point on the Moomba-Sydney pipeline near Young in New South Wales, and includes the delivery points, and pipelines leading from the first-mentioned pipeline to the delivery points, at or near the following places in that State:

- (a) Cootamundra;
- (b) Junee;
- (c) Wagga Wagga;
- (d) Young;

'wholly-owned subsidiary', in relation to the Authority, means a body corporate:

- (a) that has been formed by the Authority; and

- (b) that is a subsidiary of the Authority; and
- (c) none of whose members is a person other than:
 - (i) the Authority; or
 - (ii) a body corporate that is, under any other applications of this definition, a wholly-owned subsidiary of the Authority; or
 - (iii) a nominee of the Authority or of a body of the kind referred to in subparagraph (ii); and
- (d) no share in which is beneficially owned by a person other than:
 - (i) the Authority; or
 - (ii) a body of the kind referred to in subparagraph (c)(ii).

“Division 2—Steps leading to re-organisation

Fixing the day on which re-organisation is to take place—the re-organisation day

“33D. The Minister may, by notice in the *Gazette*, fix a day as the day on which the re-organisation under this Part is to take place.

Nomination of subsidiary to which business is to be transferred—the receiving subsidiary

“33E.(1) Subject to subsection (2), the Minister must, before the re-organisation day, by notice in the *Gazette*, nominate a subsidiary of the Authority as the receiving subsidiary for the purposes of this Part.

“(2) The Minister must not nominate a subsidiary under subsection (1) unless the subsidiary is:

- (a) a company incorporated under the Corporations Law; and
- (b) a wholly-owned subsidiary; and
- (c) a trading corporation within the meaning of paragraph 51(xx) of the Constitution.

“(3) If a subsidiary nominated under subsection (1) ceases, on or before the re-organisation day, to be a subsidiary of the Authority of the kind described in subsection (2), the Minister must revoke the nomination.

“(4) For all purposes, and in all proceedings, relating to this Act, proof of the fact that a body corporate was nominated under subsection (1) is to be taken:

- (a) to have been, on the day of the nomination, a subsidiary of the Authority of the kind described in subsection (2); and
- (b) at all times thereafter until the re-organisation day, to have continued to be such a subsidiary.

Determination of assets, instruments and liabilities to be transferred etc.—the transferring assets, instruments and liabilities

“33F.(1) The Minister may, by notice in the *Gazette*:

- (a) declare a specified asset of the Authority to be a transferring asset; or
- (b) declare a specified liability of the Authority to be a transferring liability; or
- (c) declare a specified instrument to which this Part applies to be a transferring instrument.

“(2) A declaration under subsection (1) may only be made before the re-organisation day.

“Division 3—The re-organisation

Transferred business of Authority becomes business of receiving subsidiary

“33G. On the re-organisation day, the transferred business of the Authority ceases, by force of this section, to be business of the Authority and becomes business of the receiving subsidiary.

Transferring assets and transferring liabilities of Authority become assets and liabilities of receiving subsidiary

“33H. Without limiting section 33G, on the re-organisation day, all transferring assets and transferring liabilities of the Authority cease to be assets and liabilities of the Authority and become assets and liabilities of the receiving subsidiary.

Instruments

“33J.(1) Without limiting section 33G, an instrument to which this Part applies continues, subject to subsection (2), in full force and effect on and after the re-organisation day.

“(2) A transferring instrument has effect, in relation to acts, transactions and matters done, entered into or occurring on or after the re-organisation day, as if a reference in the instrument to the Authority were a reference to the receiving subsidiary.

Pending proceedings

“33K. Without limiting section 33G, if a proceeding to which this Part applies is, immediately before the re-organisation day, pending in a court, the receiving subsidiary is, on that day, substituted for the Authority as a party.

Valuation of transferring business

“33L.(1) The Minister must, by written notice given to the Authority and the receiving subsidiary not later than 7 days after the re-organisation day, determine:

- (a) the market value of each transferring asset on the re-organisation day; and
- (b) the amount of each transferring liability on that day.

“(2) The net value of the transferring assets on the re-organisation day is the amount worked out by subtracting the total amount of the transferring liabilities from the total market value of the transferring assets on that day.

“(3) For all purposes and in all proceedings, the net value of the transferring business is taken to be the amount determined under subsection (2) as the net value of the transferring assets on that day.

Issue of shares in receiving subsidiary to Authority in relation to transferring business

“33M.(1) On the day on which the receiving subsidiary is given the notice under subsection 33L(1), the receiving subsidiary must, subject to subsection (2), issue shares in the receiving subsidiary to the Authority.

“(2) The shares issued to the Authority are taken to have been fully paid up and to have been issued for valuable consideration.

Authorised person may certify matters in relation to re-organisation

“33N.(1) An authorised person may, by signed writing, certify any matter in relation to the operation of this Division and, in particular, may certify:

- (a) whether specified assets are or are not transferring assets or non-transferring assets; and
- (b) whether specified liabilities are or are not transferring liabilities or non-transferring liabilities; and
- (c) whether specified instruments are or are not non-transferring instruments or other instruments to which this Part applies.

“(2) A document purporting to be a certificate under subsection (1) is, unless the contrary intention is established, taken to be such a certificate and to have been properly given.

Extraterritorial operation of Division

“33P. It is the intention of the Parliament that this Division should apply, to the greatest extent possible, in relation to:

- (a) things situated outside Australia; and
- (b) acts, transactions and matters done, entered into or occurring outside Australia; and
- (c) things, acts, transactions and matters (wherever situated, done, entered into or occurring) that would, apart from this Act, be governed or otherwise affected by the law of a foreign country.

Authority to take steps necessary to carry out re-organisation

“33Q. The Authority must take such steps as are necessary to ensure that this Division is fully effective, particularly in relation to its operation outside Australia.

“Division 4—Transfer of staff”

Determination of staff to be transferred to receiving subsidiary

“33R. The Chief Executive Officer may, in writing, determine that the employment of specified staff members is to be transferred to the receiving subsidiary on and from the day, or the respective days, specified in the determination.

Employment of nominated staff member to continue with receiving subsidiary

“33S. Subject to sections 33T and 33U, each nominated staff member who is a staff member immediately before his or her transfer day is, on and from the transfer day, taken to be employed by the receiving subsidiary on the terms and conditions on which he or she was employed by the Authority immediately before the transfer day.

Act not to affect certain matters relating to transferring staff members

“33T.(1) This section has effect for the purposes of the application, at any time on or after the transfer day of a transferring staff member, of a law, award, determination or agreement in relation to the employment of the transferring staff member.

“(2) Neither the transferring staff member’s contract of employment, nor his or her period of employment, is taken to have been broken by the operation of this Part.

“(3) Without limiting section 33S or subsection (2) of this section, this Part does not affect any accrued rights that the transferring staff member had immediately before the transfer day in relation to any kind of leave.

“(4) Where, if a transferred staff member had, immediately before the transfer day, ceased to be employed by the Authority:

(a) it would have been necessary to take into account a period during which the transferring staff member was employed by the Authority or any other person to determine:

(i) an amount payable to the transferring staff member; or

(ii) a benefit to which the transferring staff member would have been entitled;

because of his or her so ceasing; and

(b) apart from this subsection, some or all of that period would not have to be taken into account as a period during which the staff member was employed by the receiving subsidiary;

the receiving subsidiary must treat the whole of the first-mentioned period as a period during which the transferring staff member was employed by it.

Variation of terms and conditions of employment

“33U.(1) It is a term of each transferring staff member’s employment after his or her transfer day that the terms and conditions of that employment may be varied to the extent to which, and the manner in which, the terms and conditions of his or her employment could be varied under this Act immediately before the transfer day.

“(2) This Part does not prevent the terms and conditions of a transferring staff member’s employment after his or her transfer day from being varied:

- (a) in accordance with those terms and conditions; or
- (b) by or under a law, award, determination or agreement.

“(3) In this section:

‘**terms and conditions**’ includes a term or condition existing because of subsection (1);

‘**vary**’, in relation to terms and conditions, includes vary by way of:

- (a) omitting any of those terms and conditions; or
- (b) adding to those terms and conditions; or
- (c) substituting new terms or conditions for any of those terms and conditions.

“Division 5—Taxation matters

Exemptions relating to tax exempt matters

“33V.(1) Tax under a law of the Commonwealth or a State or Territory is not payable in relation to:

- (a) a tax exempt matter; or
- (b) anything done (including, for example, a transaction entered into or an instrument made, executed, lodged or given) because of, or for a purpose connected with or arising out of, a tax exempt matter.

“(2) In subsection (1):

‘**tax**’ includes:

- (a) sales tax; and
- (b) stamp duty; and
- (c) any other tax, fee, duty, levy or charge;

but does not include income tax imposed as such by a law of the Commonwealth or fees payable under the Corporations Law of a State or Territory.

Value of trading stock for income tax purposes

“33W.(1) For the purpose of ascertaining under Subdivision B of Division 2 of Part III of the Assessment Act the value of the receiving subsidiary’s trading stock on hand at the beginning of the year of income in which the re-organisation day occurs:

- (a) the receiving subsidiary is taken to have opted for market selling price; and
- (b) the market selling price of petroleum transferred to the receiving subsidiary is taken to be the Authority’s market selling price of the petroleum assuming the petroleum were not transferred.

“(2) Unless the contrary intention appears, expressions used in this section, and in Subdivision B of Division 2 of Part III of the Assessment Act, have the same respective meanings as in that Subdivision.

Capital gains tax—assets acquired on or after 20 September 1985

“33X.(1) This section applies in relation to an asset that:

- (a) was acquired by the Authority on or after 20 September 1985; and
- (b) is acquired by the receiving subsidiary on the re-organisation day.

“(2) For the purposes of calculating whether, under Part IIIA of the Assessment Act, a capital gain accrues to, or a capital loss is incurred by, the receiving subsidiary on the disposal of the asset by the subsidiary, the subsidiary is taken to have paid as consideration for the acquisition of the asset an amount calculated in accordance with this section.

“(3) If it is necessary to determine whether a capital gain has accrued, the consideration paid by the subsidiary for the acquisition of the asset is to be taken to have been:

- (a) if the market value of the asset on the re-organisation day is greater than the amount that would have been the indexed cost base (**‘indexed cost base’**) to the Authority for the purposes of Part IIIA of the Assessment Act if that Part had applied in respect of that disposal by the Authority to the receiving subsidiary—an amount equal to the market value of the asset; or
- (b) in any other case—an amount equal to the amount that would have been the indexed cost base.

“(4) Where it is necessary to determine whether a capital loss has been incurred, the consideration paid by the subsidiary for the acquisition of the asset is to be taken to have been:

- (a) if the market value of the asset on the re-organisation day is less than the amount that would have been the reduced cost base (**‘reduced cost base’**) to the Authority for the purposes of Part IIIA of the Assessment Act if that Part had applied in

respect of that disposal by the Authority to the receiving subsidiary—an amount equal to the market value of the asset;
or

- (b) in any other case—an amount equal to the amount that would have been the reduced cost base.

“(5) If the transferred asset is disposed of by the receiving subsidiary within 12 months of its acquisition by the Authority, subsection (3) has effect as if the references in that subsection to the indexed cost base to the Authority in relation to the asset were references to the cost base to the Authority in relation to the asset.

“(6) Unless the contrary intention appears, expressions used in this section and in Part IIIA of the Assessment Act have the same respective meanings as in that Part.

Capital gains tax—assets acquired before 20 September 1985

“33Y.(1) A transferred asset of the receiving subsidiary that was acquired by the Authority before 20 September 1985 is taken, for the purposes of Part IIIA of the Assessment Act, to have been acquired by the receiving subsidiary before that date.

“(2) Unless the contrary intention appears, expressions used in this section and in Part IIIA of the Assessment Act have the same respective meanings as in that Part.

Superannuation payments

“33Z. For the purposes of section 82AAC of the Assessment Act, a payment made by the receiving subsidiary of the Authority to the Commonwealth under:

- (a) the *Superannuation Act 1976*; or
- (b) the *Superannuation Act 1990*;

is taken to be a contribution to a fund for the purpose mentioned in paragraph 82AAC(1)(a) of the Assessment Act, being a fund that is an eligible superannuation fund, within the meaning of Part IX of the Assessment Act, in relation to the year of income of the fund in which the payment is made.”.

“Division 6—Miscellaneous

Certificates in relation to land and interests in land

“33ZA. If:

- (a) land or an interest in land becomes, under this Part, land or an interest in land of the receiving subsidiary; and
- (b) a certificate that:
 - (i) is signed by an authorised person; and
 - (ii) identifies the land or interest, whether by reference to a map or otherwise; and

(iii) states that the land or interest has, under this Part, become land or an interest in land of the receiving subsidiary;

is lodged with the Registrar-General, Registrar of Titles or other proper officer of the State or Territory in which the land is situated;

the officer with whom the certificate is lodged may:

- (c) deal with, and give effect to, the certificate as if it were a grant, conveyance, memorandum or instrument of transfer of the land (including all rights, title and interest in the land) or the interest in the land, as the case may be, to the receiving subsidiary that had been properly executed under the laws in force in the State or Territory; and
- (d) make such entries in the register as are necessary having regard to the effect of section 33H.

Certificates in relation to other assets

“33ZB. If:

- (a) an asset (other than an asset in relation to which section 33V, 33W, 33X or 33Y applies) becomes, under this Part, an asset of the receiving subsidiary; and
- (b) a certificate that:
 - (i) is signed by an authorised person; and
 - (ii) identifies the asset; and
 - (iii) states that the asset has, under this Part, become an asset of the receiving subsidiary;

is given to the person or authority who has, under the law of the Commonwealth or of a State or Territory, responsibility for keeping a register in relation to assets of that kind;

the person or authority may:

- (c) deal with, and give effect to, the certificate as if the certificate were a proper and appropriate instrument for transactions in relation to assets of that kind; and
- (d) make such entries in the register as are necessary having regard to the effect of section 33H.

Part to have effect in spite of laws and agreements prohibiting transfer etc.

“33ZC.(1) This Part has effect, and must be given effect to, in spite of anything in:

- (a) any other law of the Commonwealth or any law of a State or Territory; or
- (b) any contract, deed, undertaking, agreement or other instrument.

“(2) No provision of this Part, and nothing done by a person because of, or for a purpose connected with or arising out of, this Part:

- (a) is to be regarded as:
 - (i) placing the Authority, a subsidiary of the Authority or another person in breach of contract or confidence; or
 - (ii) otherwise making the Authority, a subsidiary of the Authority or another person guilty of a civil wrong; or
- (b) is to be regarded as placing the Authority, a subsidiary of the Authority or another person in breach of:
 - (i) any law of the Commonwealth or of a State or Territory;
or
 - (ii) any contractual provision prohibiting, restricting or regulating the assignment or transfer of any asset or liability or the disclosure of any information; or
- (c) is to be taken to release any surety from any of the surety's obligations.

“(3) Without limiting subsection (1), if, apart from this section, the consent of a person would be necessary in order to give effect to this Part in a particular respect, the consent is taken to have been given.

Compensation for acquisition of property

“33ZD.(1) If, apart from this section, the operation of this Part would result in the acquisition of property from a person otherwise than on just terms, there is payable to the person by the Authority such reasonable amount of compensation as is agreed on between the person and the Authority or, failing agreement, as is determined by a court of competent jurisdiction.

“(2) Any damages or compensation recovered, or other remedy given, in a proceeding instituted otherwise than under this section must be taken into account in assessing compensation payable in a proceeding instituted under this section and arising out of the same event or transaction.

“(3) In this section, ‘**acquisition of property**’ and ‘**just terms**’ have the same respective meanings as in paragraph 51(xxxi) of the Constitution.”.

22. After section 34 of the Principal Act the following sections are inserted:

Subsidiary of Authority not incorporated for public purposes etc. and not a public authority

“34A. A subsidiary company is taken for the purposes of the laws of the Commonwealth, of a State or of a Territory:

- (a) not to have been incorporated or established for a public purpose or for a purpose of the Commonwealth; and
- (b) not to be a public authority or an instrumentality or agency of the Crown; and

(c) not to be entitled to any immunity or privilege of the Commonwealth;

except so far as express provision is made by this Act or any other law of the Commonwealth, or by a law of a State or of a Territory, as the case may be.

Application of the *Environment Protection (Impact of Proposals) Act 1974* to subsidiary

“34B. The *Environment Protection (Impact of Proposals) Act 1974* applies to a subsidiary company as if the company were an authority of Australia within the meaning of that Act.

Lands Acquisition Act

“34C.(1) The *Lands Acquisition Act 1989* applies in relation to the acquisition of land, or an interest in land, by a subsidiary company as if the company were a Commonwealth authority within the meaning of that Act.

“(2) In subsection (1):

‘interest’, in relation to land, has the same meaning as in the *Lands Acquisition Act 1989*.

Laws relating to buildings, structures and facilities

“34D.(1) A law of a State or Territory that relates to:

(a) the standards applicable to:

(i) the design; or

(ii) the manner of the construction;

of a building, structure or facility; or

(b) the approval of the construction of a building, structure or facility; or

(c) the occupancy, or use, of a building, structure or facility; or

(d) the alteration or demolition of a building, structure or facility;

does not apply to a building, structure or facility that is the property of a subsidiary company if:

(e) the building, structure or facility was occupied or in use by the Authority; or

(f) the construction, alteration or demolition of the building, structure or facility by the Authority had commenced;

before the re-organisation day.

“(2) In this section:

‘facility’ includes a pipeline and any equipment that forms part of the pipeline;

‘re-organisation day’ has the same meaning as in Part VA.

Prescribed State laws relating to buildings, structures etc. not to apply to a subsidiary of the Authority

“34E.(1) A prescribed law of a State or Territory that relates to:

(a) the standards applicable to:

(i) the design; or

(ii) the manner of the construction;

of a building, structure or facility; or

(b) the approval of the construction of a building, structure or facility; or

(c) the occupancy, or use, of a building, structure or facility; or

(d) the alteration or demolition of a building, structure or facility;

does not apply to a building, structure or facility that is the property of a subsidiary company or is being constructed by or for a subsidiary company.

“(2) In this section:

‘facility’ includes a pipeline and any equipment that forms part of the pipeline.”.

Authority and subsidiary to do as little damage as possible

23. Section 35 of the Principal Act is amended:

(a) by inserting after subsection (1) the following subsection:

“(1A) In the exercise of its powers under this Act, a subsidiary company must cause as little detriment and inconvenience, and do as little damage, as possible.”;

(b) by inserting in subsection (2) “by the Authority or by a subsidiary company, as the case may be” after “exercise”;

(c) by inserting in subsection (2) “or by the company, as the case requires” after “paid by the Authority”;

(d) by inserting in subsection (3) “by the Authority or a subsidiary company” after “of this Act”;

(e) by inserting in subsection (3) “or the company, as the case requires,” after “the Authority” (first occurring);

(f) by inserting in subsection (3) “or the company” after “the Authority” (last occurring);

(g) by inserting in subsection (4) “or a subsidiary company” after “the Authority”;

(h) by inserting in subsection (5) “or a subsidiary company” after “the Authority”.

Marking of route of pipeline

24. Section 38 of the Principal Act is amended:

(a) by inserting “or a company that is a subsidiary of the Authority” after “Authority” (first occurring);

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(b) by omitting “the Authority” and substituting “it”.

Pipeline licence not required

25. Section 39 of the Principal Act is amended:

- (a) by inserting in paragraph (a) “or a subsidiary company” after “Authority”;
- (b) by inserting in paragraph (b) “or a subsidiary company” after “Authority”.

26. After section 43 of the Principal Act insert the following section:

Delegation

“44. the Authority may, by writing under its seal, delegate to:

- (a) a director; or
- (b) an officer or employee of the Authority;

all or any of the powers conferred on the Authority by this Act.”.

Other amendments

27. The Principal Act is further amended as set out in the Schedule.

SCHEDULE

OTHER AMENDMENTS

Subsection 3(1) (definitions of “Chairman”, “Deputy Chairman”, “Executive Member”, “member” and “part-time member”):

Omit the definitions.

Subsection 3(1):

Insert:

“ ‘**Chairperson**’ means the Chairperson of the Authority;

‘**Chief Executive Officer**’ means the Chief Executive Officer of the Authority;

‘**Deputy Chairperson**’ means the Deputy Chairperson of the Authority;

‘**director**’ means a director of the Authority;

‘**part-time director**’ means a director of the Authority appointed to be a part-time director;”.

Subsections 7(1) and (2):

Omit “member”, substitute “director”.

Subsection 7(1):

After “he” insert “or she”.

Subsections 8(1), (2) and (3):

Omit “member”, substitute “director”.

Subsections 12(2), (4), (5) and (6):

Omit “Chairman”(wherever occurring), substitute “Chairperson”.

Subsection 12(4):

After “he” insert “or she”.

Subsections 12(6) and (7):

Omit “members”, substitute “directors”.

Subsection 12(9):

Omit the subsection.

Subsection 17(1):

Omit “Executive Member”, substitute “Chief Executive Officer”.

Paragraph 17(2)(a):

(a) After “he” insert “or she”.

(b) After “him” insert “or her”.

Paragraph 17(2)(b):

After “he” insert “or she”.

SCHEDULE—continued

Section 22:

- (a) Omit “Executive Member” (wherever occurring) insert “Chief Executive Officer”.
- (b) After “him” (wherever occurring) insert “or her”.
- (c) After “his” insert “or her”.

Subsection 23(2):

- (a) Omit “Executive Member”, substitute “Chief Executive Officer”.
- (b) After “his” (wherever occurring) insert “or her”.

Subsections 32(1) and (2):

After “his” (wherever occurring) insert “or her”.

Subsections 32(4) and (5):

Omit “him”, substitute “the Auditor-General”.

Subsection 32(6):

- (a) Omit “by him”, substitute “by the Auditor-General”.
- (b) Omit “furnish him”, substitute “furnish him or her”.

NOTE

1. No. 42, 1973, as amended. For previous amendments, see No. 216, 1973; No. 91, 1976; No. 36, 1978; No. 109, 1980; Nos. 65, 159 and 166, 1985; No. 76, 1986; Nos. 21 and 129, 1989; Nos. 122 and 199, 1991; and No. 7, 1992.

[*Minister's second reading speech made in—
House of Representatives on 9 September 1992
Senate on 5 November 1992*]